

**REMARKS****1. Interview Summary**

Applicants thank Examiner Bui for the courtesies extended to Dr. Richter and applicants' attorneys, Dr. Dorothy Auth and Israel Blum, during an interview on February 19, 2004. During the interview, Applicants presented a number of claim amendments for consideration and cancelled claims to reduce the number of issues. Applicants presented a brief history of stents and a discussion of the Berry (US 6, 231,598) and Brown (US 2002/0007212 A1) references. Applicants respectfully submit that the claims, as amended, are now in condition for allowance for the reasons set forth below.

**2. Applicants' Amendments**

Claims 1, 3, 21, 95, 108, and 109 have been amended. Claims 7-8, 26-27, 34, 36-50, 67-94, 103, 111, 115, 120-121, 123-124, and 126-129 are cancelled. Applicants reserve the right to pursue the cancelled claims in a continuation application. No new matter has been added by the amendments to Claims 1, 3, 21, 95, 108, and 109. Support for these amendments to the claims is found throughout the specification and drawings, especially at page 15, lines 12-24, page 16, lines 1-9, and lines 16-19, and page 21, lines 6-13.

The claims of the present invention have been amended to more clearly define the invention as consisting of essentially triangular cells. Claims are directed to a stent having loop containing sections that include legs that are substantially aligned along the longitudinal axis. At least one of the legs in any one of the loop containing sections is shorter than at least one other leg in the same loop containing section within a triangular cell.

The short leg length referred to above is absolute length. Attached hereto as Exhibit I is a sketch of legs and loops of a stent that illustrates an example of what is the length of a leg on a loop. A loop contains two adjacent legs. As the stent expands, or is maneuvered through a curvature in the vascular system, the legs turn, but do not change in length. The short leg remains the same short length it has originally regardless of the stent's position in the vascular system. The short leg is measured by its absolute length. The shorter leg is always shorter compared to the other legs

regardless of any conditions encountered by the stent. In normal use, the same is true for loops. The shorter loop is always shorter compared to other loops regardless of any conditions encountered by the stent in normal use.

The claims also have been further amended to include the limitation that the legs have different widths. As shown in Figure 6 and page 15, lines 16-25, of the Applicants' specification, member 510 is wider than member 528.

The references are clearly distinguishable from the present invention. The Berry reference describes a multicellular structure and is more similar to an articulated stent that is rigid and less flexible than the stent of the present invention. The Brown reference describes only square cells, and all members having the same widths. Reconsideration of this application, as amended is respectfully requested.

3. §102 Rejection of Claims over Berry

Former Claims 1-6, 9-10, 20-25, 27-33, 35-44, 46, 48-50, 67-70, 72-75, 77-79, 81, 83-84, 86-88, 90-91, 95-102, 104-105, 108-114, and 116-119 have been rejected under 35 U.S.C. §102(e) as being anticipated by Berry (US 6, 231,598).

Berry does not teach or suggest loop containing sections that include a short leg that is substantially aligned along the longitudinal axis of the stent, as Applicants now claim. The short leg claimed by Applicants is an absolute measure of length. The leg of the present invention is short regardless of changes in stent orientation, for example as the stent is passed along the curvature of the vascular system, or regardless of conditional changes in the stent such as stent expansion. The shorter member identified in Berry in the previous Office Action dated February 6, 2004 is not substantially aligned along the longitudinal axis of the stent. In addition, the identified shorter member is not a short leg as claimed by Applicants. There can be no flexibility in the shorter member in Berry due to the longitudinal struts (15, 16) that maintain longitudinal orientation, hence rigidity, during and after stent expansion (See, Col, 9, lines 24-30)

Applicants respectfully request favorable reconsideration of the claims in view of the instant amendment. Withdrawal of the rejection applied to former Claims 1-6, 9-10,

20-25, 27-33, 35-44, 46, 48-50, 67-70, 72-75, 77-79, 81, 83-84, 86-88, 90-91, 95-102, 104-105, 108-114, and 116-119 under 35 U.S.C. §102 is respectfully requested.

4. §103 Rejection of Claims in view of Berry and Official Notice

Former Claims 11, 71, 82, 85, 89, 92, 122 and 125 have been rejected under 35 U.S.C. §103 as being unpatentable over Berry in view of Official Notice. The Examiner argues that the instant stent is an obvious matter of design choice in view of Berry which would be recognized as being within the level of ordinary skill in the art. Applicants respectfully disagree.

Applicants repeat their remarks as discussed above, and reiterate that the claimed features are not an obvious matter of design choice.

Berry does not teach or suggest the claimed invention. In fact, Berry teaches away from Applicants' invention by describing a member that is not a short leg as defined by the Applicants. Berry merely describes an "interconnection strut" in the circumferential direction that attaches a longitudinal strut (15) to a curvilinear strut of interconnection segment (21). (See Berry, Figs. 1, 5, and 8 and Col. 11, lines 55-65).

Applicants, on the other hand, claim a stent having loop containing sections that include legs that are substantially aligned along the longitudinal axis of the stent. At least one leg is shorter than another leg within a triangular cell. The mere fact that a structure described in a reference could be modified to produce the claimed invention would not have made the modification obvious unless the reference suggested the desirability of the modification In re Fritch, 23 U.S. P. Q. 1780, 1783 (Fed. Cir. 1992); In re Gordon, 21 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984). Since Berry does not teach or suggest this concept, but in fact teaches away from it, reconsideration and withdrawal of the rejection applied to former Claims 11, 71, 82, 85, 89, 92, 122 and 125 under 35 U.S.C. §103 is respectfully requested.

5. Response to Examiner's Remarks in "Response to Amendment Section"

The Examiner previously found Claims 8, 26, 34, and 47 to be allowable if rewritten in independent form to include all the limitations of their base claims and any intervening claims. (See Office Action dated December 3, 2002). Claims 8, 26, 34, and

47 were canceled and their individual limitations have been added to corresponding independent base claims. Intervening limitations were not added in view of the limitations added in the present response, which were discussed with the Examiner during the interview on February 19, 2004.

CONCLUSION

Based on the foregoing amendment and remarks, applicants respectfully submit that the claims as currently presented are patentable and in condition for allowance.

If any issues remain, or if the Examiner has any suggestions for expediting allowance of this application, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

Favorable consideration is respectfully requested.

AUTHORIZATION

The Commissioner is hereby authorized to charge any additional fees that may be required for this amendment, or credit any overpayment to Deposit Account No. 13-4500, Order No. 4303-4003US1. **A DUPLICATE OF THIS DOCUMENT IS ATTACHED.**

Respectfully submitted,

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